Item 766-F
L35.6/3-4:978/ch.3
I 29.311-411
C 575
(contin)

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SUBSCRIPTION SERVICE

9026

VOLUME IV- OTHER REGULATIONS AND PROCEDURES

CHANGE 3—JANUARY 28, 1980

OSHA 2080

INTRODUCTION

This change incorporates the following changes and additions published in the Federal Register:

1. Amends 29 CFR 1952.175. (See 44 F.R. 36384, 6/22/79.)
2. Adds 29 CFR 1952.214(h) thru (o). (See 44 F.R. 28326, 5/15/79.)
3. Adds 29 CFR 1952.384. (See 44 F.R. 41429, 7/17/79.)
4. Adds 29 CFR 1952.254(i) and 1952.255. (See 44 F.R. 76783, 12/28/79.)
5. Adds 29 CFR 2200 Subpart M. (See 44 F.R. 70110, 12/5/79.)
6. Amends 29 CFR 2200. (See 44 F.R. 70110, 12/5/79.)

INSTRUCTIONS

1. Substitute or add the attached pages as indicated in the following table:

REMOVE EXISTING PAGE	*INSERT CHANGE PAGE*
Title/A	Title/A
215/216	215/216
245/246	245/246
253/254	253/254
.....	254.1/254.2
265/266	265/266
.....	266.1/266.2
291/292	291/292
405/406	405/406
.....	406.1/406.2
409 thru 412	409 thru 412
415/416	415/416
421 thru 424	421 thru 424
424.1/424.2	424.1/424.2
.....	424.3 thru 424.6
425/426	425/426

2. Enter a record of this change on page i.
3. Retain this cover sheet as a record of the contents of this change.

Other Regulations & Procedures

MARCH, 1978

CHANGE 3—JANUARY 28, 1980

U.S. Department of Labor
Ray Marshall, Secretary

Occupational Safety and Health Administration
Eula Bingham, Assistant Secretary

Volume IV OSHA 2080

LIST OF EFFECTIVE PAGES

TOTAL NUMBER OF PAGES IS **546** AS FOLLOWS:

Page No.	*Issue*
*Title	Change 3
*A	Change 3
i thru vi	Original
1 thru 50	Original
51 thru 56	Change 1
56.1/56.2	Change 1
56.3/56.4	Change 2
57 thru 211	Original
212 thru 214	Change 2
*215	Change 3
216 thru 224	Original
225/226	Change 2
227 thru 240	Original
241	Change 2
242/243	Original
244	Change 2
*245	Change 3
246 thru 253	Original
*254	Change 3
*254.1 thru 254.2	Change 3
255 thru 256	Original
257 thru 258	Change 2
258.1 thru 258.2	Change 2
259 thru 264	Original
*265 thru 266	Change 3
*266.1 thru 266.2	Change 3
267 thru 272	Original
273 thru 278.2	Change 2
279 thru 281	Original
282	Change 2
283 thru 290	Original
*291 thru 292	Change 3
293 thru 294	Original
295 thru 297	Change 2
298	Original
299 thru 304	Change 2
305 thru 330	Original
331	Change 2
332 thru 339	Original
340 thru 340.2	Change 2
341 thru 404	Original
405	Change 2
*406	Change 3
*406.1 thru 406.2	Change 3
407 thru 409	Original
*410	Change 3
411	Original
*412	Change 3
413	Original
414	Change 2
*415	Change 3
416 thru 420	Original
*421 thru 424	Change 3
*424.1 thru 424.6	Change 3
*425 thru 426	Change 3
427 thru 436	Original
437/438	Change 2
439 thru 526	Original

*Indicate pages changed, added, or deleted by the current change

SUBPART AA—WISCONSIN [REVOKED.]

SUBPART BB—WYOMING

1952.340 Description of the plan.
1952.341 Where the plan may be inspected.
1952.342 Level of Federal enforcement.
1952.343 Developmental schedule.
1952.344 Completed developmental steps.

SUBPART CC—ARIZONA

1952.350 Description of the plan.
1952.351 Where the plan may be inspected.
1952.352 Level of Federal enforcement.
1952.353 Developmental schedule.
1952.354 Completed developmental steps.

SUBPART DD—NEW MEXICO

1952.360 Description of the plan.
1952.361 Where the plan may be inspected.
1952.362 Level of Federal enforcement.
1952.363 Developmental schedule.
1952.364 Completed developmental steps.

SUBART EE—VIRGINA

1952.370 Description of the plan.
1952.371 Where the plan may be inspected.
1952.372 Level of Federal enforcement.
1952.373 Developmental schedule.

[41 F.R. 39027, September 14, 1976.]

SUBPART FF—PUERTO RICO

1952.380 Description of the plan.
1952.381 Where the plan may be inspected.
1952.382 Level of Federal enforcement.
1952.383 Developmental schedule.
1952.384 Completed developmental steps.

SOURCE: The provisions of this Part 1952 appear at 37 F.R. 25929, Dec. 6, 1972 unless otherwise noted. AUTHORITY: Sec. 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667).

SUBPART A—GENERAL PROVISIONS AND CONDITIONS

1952.1—PURPOSE AND SCOPE

(a) This part sets forth the Assistant Secretary's approval of State plans submitted under section 18 of the Act and Part 1902 of this chapter. Each approval of a State plan is based on a determination by the Assistant Secretary that the plan meets the requirements of section 18(c) of the Act and the criteria and indices of effectiveness specified in Part 1902.

(b) This subpart contains general provisions and conditions which are applicable to all State plans, regardless of the time of their approval. Separate subparts are used for the identification of specific State plans, indication of locations where the full plan may be inspected and copied, and setting forth any special conditions and special policies which may be applicable to a particular plan.

1952.2—DEFINITIONS

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(b) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

1952.3—DEVELOPMENTAL PLANS

Any developmental plan; that is, a plan not fully meeting the criteria set forth in § 1902.3 of this chapter at the time of approval, must meet the requirements of § 1902.2(b) of this chapter.

1952.4 RECORDKEEPING AND REPORTING REQUIREMENTS.

(a) States must adopt recordkeeping and reporting regulations which are substantially identical to 29 CFR Part 1904 "Recording and Reporting Occupational Injuries and Illnesses" except for § 1904.13 of this chapter, which provides for variances. However, a State is not precluded from imposing stricter recordkeeping requirements; that is, requiring records from employers of any number of employees.

[42 F.R. 38568, July 29, 1977.]

(b) Employer petitions for variances or exceptions to State recordkeeping and reporting requirements under an approved plan must be obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. Therefore, a State may not grant a variance to recordkeeping and reporting requirements under their own procedures.

(c) In order to preserve the uniformity of statistics, a State must recognize all variances granted by the Bureau of Labor Statistics.

(o) Enforcement of standards pertaining to temporary labor camps was implemented in March 1977.

[42 F.R. 37549, July 22, 1977.]

(p) In accordance with § 1903.34 of this chapter, the California occupational safety and health plan was certified, effective August 12, 1977, as having completed all developmental steps specified in the plan as approved on April 24, 1973, on or before June 1, 1976, with the exception that temporary labor camp standards development and enforcement program was completed on March 11, 1977.

[42 F.R. 41858, August 19, 1977.]

1952.175 CHANGES IN CERTIFIED PLANS

(a) In accordance with Subpart E of Part 1953 of this Chapter, the California carcinogen program implemented on January 1, 1977, was approved by the Assistant Secretary on March 6, 1978.

[43 F.R. 9806, March 10, 1978.]

(b) On Januray 1, 1978, the California Department of Industrial Relations became the agency designated to administer the California Occupational Safety and Health Plan.

[44 F.R. 36384, June 22, 1979.]

SUBPART L—REVOKED

[40 F.R. 27655, July 1, 1975.]

SUBPART M—COLORADO

1952.190—DESCRIPTION OF THE PLAN

(a)

(1) The plan identifies the Department of Labor and Employment, Division of Labor and Employment, Division of Labor, as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902(c)(1) of this chapter. All standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring) and § 1910.267 of this chapter (agricultural standards) will be adopted and enforced within 120 days after the standards are found to be at least as effective by the Secretary of Labor. Agricultural standards are expected to be adopted and enforced by July 1, 1974.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; and procedures for prompt restraint or elimination imminent danger situations.

(b)

(1) The plan includes legislation enacted by the Colorado Legislature during its 1973 legislative session amending Chapter 80 and related provisions of the Colorado Revised Statutes to bring them into conformity with the requirements of Part 1902 of this chapter. Under the legislation the Department of Labor and Employment will have full authority to enforce and administer laws respecting the safety and health of employees in all workplaces of the State. The legislation further proposes to bring the State into conformity in areas such as vari-

ances and protection of employees from hazards.

(2) The legislation is also intended to insure inspections in response to complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers for violations of standards and orders; employer right of review to the Colorado Industrial Commission and then to the courts, and employee participation in review proceedings. The plan also proposes to develop a program to encourage voluntary compliance by employers and employees, including provision for on-site consultation. The State's proposed consultation program should not detract from its enforcement program and the State has given assurances that it will meet the conditions set forth in the issues discussed in the Washington decision (38 F.R. 2421, January 26, 1973).

(c) The plan includes a statement of the Governor's support for the legislation and a legal opinion from an attorney that the legislation will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Colorado. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902.

(d) The Colorado plan includes the following documents as of the date of approval:

(1) The plan description documents including draft legislation and appendices in one volume;

(2) Letter from Gregory Rogers, OSHA Coordinator of the Department of Labor and Employment, to Charlie Y. Boyd, Project Officer, Office of Federal and State Operations, January 9, 1973, submitting the proposed legislation;

(3) Letters from James M. Shaffer, Executive Director of the Department of Labor and Employment, to Thomas C. Brown, Director, Office of Federal and State Operations, February 16, 1973, March 9, 1973, April 9, 1973, July 1[illegible] 1973, and August 10, 1973, submitting information, clarifications and revisions on several issues raised during the review process, including revision of the draft legislation.

(4) A copy of the enabling legislation as enacted by the State Legislature in its 1973 session.

(e) The public comments will also be available for inspection and copying with the plan documents.

1952.191—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: Director, Division of Labor, Department of Labor and Employment, 200 East Ninth Avenue, Denver, Colorado 80203; Assistant Regional Director, Occupational Safety and Health Administration, Room 15010, Federal Building, 1961 Stout Street. Denver, Colorado 80202; United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210

[39 F.R. 4661, February 6, 1974.]

1952.192—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20 (b) (1) (iii) and § 1954.3 of this chapter under which an agreement has been entered into with Colorado, effective November 27, 1974, and based on a determination that Colorado is operational in issues covered by the Colorado occupational safety and health plan, dis-

1952.212—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) of Title 29 Code of Federal Regulations, the present level of Federal enforcement in Maryland will not be diminished presently because of the developmental aspects of Maryland's enforcement program in the areas of occupational health and agriculture. Among other things the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its Target Safety and Target Health programs, and inspect a cross-section of all industries on a random basis.

1952.213—DEVELOPMENTAL SCHEDULE

(a) Occupational health study accepted and implementation begun July, 1973;

(b) Compliance Manual developed by July, 1973;

(c) Agreement with the Fire Marshal within 30 days of plan approval.

(d) Training in compliance procedures by August, 1973;

(e) Promulgation of standard-setting procedures, August, 1973;

(f) Inspection and enforcement program, except as provided in paragraph (k), in September, 1973;

(g) Staff of hearing examiners and review procedures set up in September, 1973;

(h) Variance procedures and emergency temporary standard-setting procedures promulgated October, 1973;

(i) Review of appeal procedures to see if it should be continued or modified, July, 1974;

(j) Review of job qualifications within one year of plan approval;

(k) Inspection and enforcement of agriculture standards by December 1974.

[41 F. R. 45564, October 15, 1976.]

(l) Fully operational occupational health program, July, 1975;

(m) Fully implemented public employees program, December, 1975;

(n) Management Information System, December, 1975;

(o) Adoption of maritime standards, December, 1975.

[38 F.R. 17834, July 5, 1973.]

1952.214—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1953.4, the Maryland occupational safety and health standards were approved by the Assistant Regional Director on October 3, 1974.

(b) In accordance with the requirements of 29 CFR 1952.10, the Maryland State poster was approved by the Assistant Secretary on June 6, 1975.

REGULATIONS AND PROCEDURES

(c) In accordance with the commitment expressed in § 1952.213(l), the State of Maryland developed and implemented an occupational health plan by December 31, 1975.

(d) In accordance with the commitment expressed in § 1952.213(n), the designee developed a fully operational Management Information System by May 1, 1975.

[41 F.R. 45564, October 15, 1976.]

(e) In accordance with 29 CFR 1952.213(d), training of Maryland compliance personnel in compliance procedure was completed by December 31, 1975.

(f) In accordance with 29 CFR 1952.213(f), the Maryland inspection and enforcement program was implemented by September 1973.

(g) In accordance with 29 CFR 1952.213(j), review of the appeal procedures to see if they should be continued or modified was conducted by the State by May 1975.

[42 F.R. 10987, February 25, 1977.]

(h) In accordance with 29 CFR 1952.213(b), Maryland completed development of a Compliance Manual.

(i) In accordance with 29 CFR 1952.213(e), the State has promulgated acceptable standard-setting procedures.

(j) In accordance with 29 CFR 1952.213(h), Maryland promulgated acceptable variance procedures and emergency temporary standard-setting procedures.

(k) In accordance with 29 CFR 1952.213(j), review of the job qualifications of State personnel was conducted by the State.

(l) In accordance with 29 CFR 1952.213(m), the State of Maryland has developed and implemented a safety and health program for public employees.

[44 F.R. 28327, May 15, 1979.]

(m) In accordance with 29 CFR 1952.213(a), the State submitted an occupational health study, and the State's occupational health plan is being implemented.

(n) In accordance with 29 CFR 1952.213(g), the State established a staff of hearing examiners and review procedures.

(o) In accordance with 29 CFR 1952.213(k), agricultural standards are being enforced by the Maryland Department of Labor and Industry.

[44 F.R. 28326, May 15, 1979.]

SUBPART P—TENNESSEE

1952.220—DESCRIPTION OF THE PLAN

(a) The plan identifies the Department of Labor and the Department of Health as the agencies designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. All standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, ship building, ship breaking and longshoring) will be adopted and enforced immediately upon approval of the plan by the Assistant Secretary.

(b)

(1) The plan includes legislation passed by the Tennessee Legislature during its 1972 session which became effective July 1, 1972. Under the law, the Department of Labor and the Department of Public Health will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State with the exception of employees of the United States or employees protected un-

der other Federal occupational safety and health laws such as the Atomic Energy Act of 1959 (42 U.S.C. 2011 *et seq.*). The Federal Coal Mine Safety Act of 1969 (30 U.S.C. 801), the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721 *et seq.*), railroad employees covered by the Federal Safety Appliances Act (45 U.S.C. 1 *et seq.*), and the Federal Railroad Safety Act (45 U.S.C. 421 *et seq.*), the Longshoremen's and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 *et seq.*), domestic workers, and any employee engaged in agriculture who is employed on a family farm. The Act further provides for the protection of employees from hazards, procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; procedures for prompt restraint or elimination of imminent danger situations.

(2) The Act also insures inspections in response to complaints; employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representative when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; adequate safeguards to protect trade secrets; provisions for prompt notice to employers and employees of alleged violations of standards and abatement requirements; a system of sanctions against employers for violations of standards; em-

1952.254—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1952.253(b), amendments to the Virgin Island legislation were passed March 11, and February 26, 1974.

(b) In accordance with § 1952.253(c), the Virgin Islands occupational safety and health standards were promulgated on March 21, 1974.

[40 F.R. 11352, March 11, 1975.]

(c) In accordance with § 1952.253(a) the Virgin Islands has completed the training as described therein.

(d) The Virgin Islands has developed and implemented a manual Management Information System.

(e) In accordance with the requirements of § 1952.10 the Virgin Islands safety and health posters for private and public employees were approved by the Assistant Secretary on September 28, 1976.

[41 F.R. 43406, October 1, 1976.]

(f) The Virgin Islands has developed and implemented an effective Public Information Program.

(g) The Virgin Islands amended its legislation to (i) delete reference to "political subdivisions" and substitute the term "department," and (ii) to add new sections (1) "Variations, Tolerances and Exemptions," and (2) "Disclosure of Confidential Trade Secrets."

(h) The Virgin Islands' Field Operations Manual (FOM) modeled after the Federal FOM has been developed by the State, and approved by the Assistant Secretary.

[42 F.R. 40195, August 9, 1977.]

(i) The Virgin Islands has developed

(1) an acceptable organizational chart;

(2) job descriptions for V.I. occupational safety and health employees which meet the necessary requirements;

(3) a procedure to correct a problem of understaffing in the V.I. in terms of plan commitment;

(4) a procedure for rating and ranking candidates; and

(5) an Affirmative Action Plan for Equal Employment Opportunity acceptable to CSC.

[44 F.R. 76783, December 28, 1979]

1952.255 CHANGES TO APPROVED PLANS.

(a) In accordance with Part 1953, Subpart C of this Chapter, the following Virgin Islands plan changes were approved by the Assistant Secretary on December 20, 1979.

(1) The Virgin Islands amended its Regulation on Discrimination Against Employees Exercising Rights under 24 V.I.C. sec 40(c) to assure payment to employees for time engaged in walkaround activities in accordance with Federal regulations.

(2) The Virgin Islands amended Chapters VIII, X, XI, and XII through September 1977, changing the penalty calculation and assessment procedures to mirror OSHA procedures currently in use for both serious and other-than-serious violations.

[44 F.R. 76783, December 28, 1979.]

SUBPART T—MICHIGAN

1952.260—DESCRIPTION OF THE PLAN

(a) The plan identifies the Michigan Department of Labor and the Department of Public Health as the agencies to be responsible for administering the plan throughout the State. The Department of Labor will be responsible for promulgating and enforcing general safety and construction safety standards while the Department of Public Health will be responsible for the promulgation and enforcement of occupational health standards. Two independent commissions within the Department of Labor, the Construction Safety Commission and the Occupational Safety Standards Commission will promulgate general and construction safety standards while the Director of Public Health will promulgate health standards. Applications for variances to standards will be handled by the two Departments. Administrative adjudications will be the responsibility of the Occupational Safety Compliance and Appeals Board, the Construction Safety Compliance and Appeals Board, and the Occupational Health Review Commission.

(b) The State program is expected to extend its protection to all employees in the State (including those employed by it and its political subdivisions) except those employed by Federal agencies, maritime workers, household domestic workers, and mine workers.

(c) The Plan provides that the State agencies will have full authority to administer and to enforce all laws, rules and orders protecting employee safety and health in all places of employment in the State. It also proposes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards, and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment, and procedures for variances and the protection of employees from hazards. It further provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, adequate safeguards to protect trade secrets, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceeding, procedures for prompt restraint or elimination of imminent danger conditions, provision for the issuance of cease operation orders in cases where employers fail to comply with final orders for abatement, and provision for inspections in response to complaints.

(d) The State intends to promulgate standards for all of the issues contained in 29 CFR Parts 1910 and 1926 with the exception of Ship Repairing (§ 1910.13), Shipbuilding (§ 1910.14), Shipbreaking (§ 1910.15) and Longshoring (§ 1910.16), which standards are to be as effective as Federal standards. Michigan had originally not intended to promulgate a standard covering cooperage machinery comparable to 29 CFR 1910.214, but it has now provided assurances that it will promulgate such standard if the hazards covered by the Federal cooperate standard are found to exist in Michigan. The State has already promulgated standards as effective as Subparts F, K, M, Q and S and the remaining Subparts are to be covered by State standards which are to be promulgated by June 1975.

(e) The Plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the Constitution and laws of Michigan. The Plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 of this title upon enactment of the proposed legislation by the State legislature. A merit system of personnel administration will be used. In addition, health

and safety education and training programs are be carried on for the benefit of employers and employees. The Department of Labor will also be conducting a Safety Director Program wherein companies which are found to have high injury incident rates will be assisted in developing safety programs.

1952.261—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, 300 South Wacker Drive, Chicago, Illinois 60606; Michigan Department of Labor, Bureau of Safety and Regulation, 2nd Floor, 300 East Michigan Avenue, Lansing, Michigan 48926; Michigan Department of Public Health, Division of Occupational Health, Media Building, 2nd Floor, 3500 North Logan Street, Lansing, Michigan 48114.

[39 F.R. 4661, February 6, 1974.]

1952.383 DEVELOPMENTAL SCHEDULE

The Puerto Rico State plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Translation of position description for State plan personnel by December 1978;

(b) Public Information Program (private sector), one month after plan approval;

(c) Analysis for inspection scheduling (private sector), one month after plan approval;

(d) Submit administrative regulations, two weeks after plan approval;

(e) Affirmative action plan by 1978;

(f) File and promulgate standards, one month after plan approval;

(g) Adopt the Field Operations Manual, one month after plan approval;

(h) Adopt Management Information System, upon plan approval;

(i) Internal training schedule, three months after plan approval;

(j) Employer, employee training schedule, six to twelve months after plan approval;

(k) Public information program (Government sector), six months after plan approval;

(l) Analysis for inspection scheduling (Government sector), seven months after plan approval;

(m) Implementation of public employee program, eight months after plan approval.

1952.384—COMPLETED DEVELOPMENTAL STEPS

In accordance with the requirements of § 1952.10, Puerto Rico's safety and health posters for private and public employees were approved by the Assistant Secretary, on July 2, 1979.

[44 F.R. 41429, July 17, 1979.]

Chapter XX—Occupational Safety and Health Review Commission

PART 2200

RULES OF PROCEDURE

SUBPART A—GENERAL PROVISIONS

2200.1 Definitions.
2200.2 Scope of rules; applicability of Federal Rules of Civil Procedure.
2200.3 Use of gender and number.
2200.4 Computation of time.
2200.5 Extensions of time.
2200.6 Record address.
2200.7 Service and notice.
2200.8 Filing.
2200.9 Consolidation.
2200.10 Severance.
2200.11 Protection of trade secrets and other confidential information.

SUBPART B—PARTIES AND REPRESENTATIVES

2200.20 Party status.
2200.21 Intervention; appearance by non-parties.
2200.22 Representatives of parties and intervenors.

SUBPART C—PLEADINGS AND MOTIONS

2200.30 Form.
2200.31 Caption; titles of cases.
2200.32 Notices of contest.
2200.33 Employer contests.
2200.34 Petitions for modification of abatement.
2200.35 Employee contests.
2200.36 Statement of position.
2200.37 Response to motions.
2200.38 Failure to file.

SUBPART D—PRE-HEARING PROCEDURES AND DISCOVERY

2200.51 Pre-hearing conferences.
2200.52 Requests for admissions.
2200.53 Discovery depositions and interrogatories.
2200.54 Failure to comply with orders for discovery.
2200.55 Issuance of subpenas; petitions to revoke or modify subpenas; right to inspect or copy data.

SUBPART E—HEARINGS

2200.60 Notice of hearing.
2200.61 Postponement of hearing.
2200.62 Failure to appear.
2200.63 Payment of witness fees and mileage; fees of persons taking depositions.
2200.64 Reporter's fees.
2200.65 Transcript of testimony.
2200.66 Duties and powers of Judges.
2200.67 Disqualification of Judge.
2200.68 Examination of witnesses.
2200.69 Affidavits.
2200.70 Deposition in lieu of oral testimony; application; procedures; form; rulings.
2200.71 Exhibits.
2200.72 Rules of evidence.
2200.73 Burden of proof.
2200.74 Objections.
2200.75 Interlocutory appeals
2200.76 Filing of briefs and proposed findings with the Judge; oral argument at the hearing.

SUBPART F—POST HEARING PROCEDURES

2200.90 Decisions of Judges.
2200.91 Discretionary review; petitions for; statements in opposition.
2200.92 Review by the Commission.
2200.93 Briefs before the Commission.
2200.94 Stay of final order.
2200.95 Oral argument before the Commission.

SUBPART G—MISCELLANEOUS PROVISIONS

2200.100 Settlement.
2200.101 Expedited proceeding.
2200.102 Standards of conduct.
2200.103 Ex parte communication.
2200.104 Restrictions as to participation by investigative or prosecuting officers.
2200.105 Inspection and reproduction of documents.
2200.106 Restrictions with respect to former employees.
2200.107 Amendments to rules.
2200.108 Special circumstances; waiver of rules.
2200.109 Penalties.
2200.110 Official Seal Occupational Safety and Health Review Commission.

SUBPARTS H THROUGH L—[RESERVED]

SUBPART M—SIMPLIFIED PROCEEDINGS

2200.200 Purpose.
2200.201 Application.
2200.202 Eligibility for simplified proceedings.

2200.203 Commencing simplified proceedings.
2200.204 Filing of pleadings.
2200.205 Discussion among parties.
2200.206 Conference/Hearing.
2200.207 Reporter present: transcripts.
2200.208 Decision of the Judge.
2200.209 Discovery.
2200.210 Interlocutory appeals not permitted.
2200.211 Applicability of Subparts A through G.

Authority: Sec. 12(g) of the Occupational Safety and Health Act, Pub. L. No. 91-596 (29 U.S.C. § 661(f)).

Source: The provisions of this Part 2200 appear at 37 F.R. 20237, Sept. 28, 1972, unless otherwise noted.

(g) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure. Notice of intent to participate should be sent to:

Occupational Safety and Health
Review Commission
1825 K Street, N.W.
Washington, D.C. 20006

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substitued:

The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(h) The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) A copy of the notice of the hearing to be held before the Judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) A copy of the notice of the hearing to be held before the Judge shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(k) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with § 2200.35 of this part, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(l) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

2200.8—FILING

(a) Prior to the assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, D.C. 20006. Subsequent to the assignment of the case to a Judge, and before the issuance of his decision, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the issuance of the decision of the Judge, all papers shall be filed with the Executive Secretary.

(b) Unless otherwise ordered, all filing may be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

2200.9—CONSOLIDATION

Cases may be consolidated on the motion of any party, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

2200.10—SEVERANCE

Upon its own motion, or upon motion of any party or intervenor, the Commission or the Judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

2200.11—PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION

Upon application by any person, in a proceeding where trade secrets or other matters may be divulged the confidentiality of which is protected by 18 U.S.C. 1905, the Judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

[44 F.R. 70110, December 5, 1979.]

SUBPART B—PARTIES AND REPRESENTATIVES

2200.20—PARTY STATUS

(a) Affected employees may elect to participate as parties at any time before the commencement of the hearing before the Judge, unless, for good cause shown, the Commission or the Judge allows such election at a later time. See also § 2200.21.

(b) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the Judge. See also § 2200.21.

2200.21—INTERVENTION; APPEARANCE BY NONPARTIES

(a) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the Judge.

(b) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

(c) The Commission or the Judge may grant a petition for intervention to such an extent and upon such terms as the Commission or the Judge shall determine.

2200.22—REPRESENTATIVES OF PARTIES AND INTERVENORS

(a) Any party or intervenor may appear in person or through a representative.

(b) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(c) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

(d) Nothing contained herein shall be construed to require any representative to be an attorney at law.

(e) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

SUBPART C—PLEADINGS AND MOTIONS

2200.30—FORM

(a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with rule 31 of this subpart, which shall include the Commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(b) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). The left margin shall be 1½ inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.

(c) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

(d) When a court decision is cited in which the first-listed parties on each side are the Secretary of Labor (or the name of a particular Secretary of Labor) and the Commission, the citation shall include in parenthesis the name of the respondent in the Commission proceeding. For example: *Brennan v. OSHRC (Vy Lactos Laboratories, Inc.)*, 494 F.2d 460 (8th Cir. 1974).

(e) The Commission may refuse for filing any pleading or document which does not comply with the requirements of paragraphs (a), (b), (c) and (d) of this section.

[44 F.R. 70110, December 5, 1979.]

2200.31—CAPTION; TITLES OF CASES

(a) Cases initiated by a notice of contest shall be titled:

Secretary of Labor,
Complainant
v.
(Name of Contestant),
Respondent.

(b) Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer),
Petitioner
v.
Secretary of Labor,
Respondent.

(c) The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(d) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

2200.32—NOTICES OF CONTEST

The Secretary shall, within 7 days of receipt of a notice of contest, transmit the original to the Commission, together with copies of all relevant documents.

2200.37—RESPONSE TO MOTIONS

Any party or intervenor upon whom a motion is served shall have 10 days from service of the motion to file a response.

2200.38—FAILURE TO FILE

Failure to file any pleading pursuant to these rules when due, may, in the discretion of the Commission or the Judge, constitute a waiver of the right to further participation in the proceedings.

SUBPART D—PREHEARING PROCEDURES AND DISCOVERY

2200.51—PREHEARING CONFERENCE

(a) At any time before a hearing, the Commission or the Judge, on their own motion or on the motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference to consider settlement or matters which will tend to simplify issues or expedite the hearing.

[44 F.R. 70110, December 15, 1979.]

(b) The Commission or the judge may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

2200.52—REQUESTS FOR ADMISSIONS

(a) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 15 days after service of the request, or within such shorter or longer time as the Commission or the Judge may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(b) Copies of all requests and responses shall be served on all parties in accordance with the provisions of § 2200.7(a) and filed with the Commission within the time allotted and shall be a part of the record.

2200.53—DISCOVERY DEPOSITIONS AND INTERROGATORIES

(a) Except by special order of the Commission or the Judge, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(b) In the event the Commission or the Judge grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

2200.54—FAILURE TO COMPLY WITH ORDERS FOR DISCOVERY

If any party or intervenor fails to comply with an order of the Commission or the Judge to permit discovery in accordance with the provisions of these rules, the Commission or the Judge may issue appropriate orders.

2200.55—ISSUANCE OF SUBPENAS; PETITIONS TO REVOKE OR MODIFY SUBPENAS; RIGHT TO INSPECT OR COPY DATA

(a) Any member of the Commission shall, on the application of any party directed to the Commission, forthwith issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpenas, if filed subsequent to the assignment of the case to a Judge, shall be filed with the Judge. A Judge shall grant the application on behalf of any member of the Commission. Applications for subpenas may be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

(b) Any person served with a subpena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpena upon him, move in writing to revoke or modify the subpena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpena was issued. The Judge or the Commission, as the case may be, shall revoke or modify the subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The Judge or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the

2200.72—RULES OF EVIDENCE

Hearings before the Commission and its Judges shall be in accordance with § 554 of Title 5 U.S.C. and insofar as practicable shall be governed by the rules of evidence applicable in the United States District Courts.

2200.73—BURDEN OF PROOF

(a) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Secretary.

(b) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

2200.74—OBJECTIONS

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

2200.75—INTERLOCUTORY APPEALS.

(a) Generally. A Judge's interlocutory ruling may be appealed to the Commission only in the manner prescribed by this rule.

(b) Certification. A party desiring to appeal from an interlocutory ruling shall file with the Judge a written request for certification of the appeal. The request and supporting documents shall be filed within 5 days after receipt of the Judge's ruling from which appeal is sought. Responses to the request, if any, shall be filed within 5 days after service of the request. The Judge shall certify an interlocutory appeal when the ruling involves an important question of law or policy about which there is substantial ground for difference of opinion and an immediate appeal of the ruling may materially expedite the proceedings.

(1) Procedure after certification. Following certification, the Judge shall forward to the Executive Secretary the request for certification and supporting documents, responses filed by the other parties, the ruling from which appeal is taken, a copy of relevant portions of the record, and the Judge's order certifying the appeal.

(2) Acceptance of certification—discretionary. The Commission at any time may decline to accept a certification.

(c) Petition for interlocutory appeal. Within 5 days following the receipt of a Judge's order denying certification, a party may file with the Commission a petition for interlocutory appeal. Responses to the petition, if any, shall be filed within 5 days following service of the petition. The Commission shall grant a petition for interlocutory appeal only in exceptional circumstances where it finds (1) that the appeal satisfies the

criteria for certification of an appeal set forth in paragraph (b) of this section; and (2) that there is a substantial probability of reversal.

(d) Denial without prejudice. The Commission's action in declining to accept a certification or denying a petition for interlocutory appeal shall not preclude a party from raising an objection to the Judge's interlocutory ruling in a petition for discretionary review. A party whose request for certification of an interlocutory appeal is denied by a Judge and who elects not to file a petition for interlocutory appeal with the Commission shall not be precluded from raising in a petition for discretionary review an objection to the ruling from which interlocutory appeal was sought.

(e) Stay.

(1) Trade secret mattters. The filing with a Judge of a request to certify an interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling:

(i) until the Judge denies the request; or

(ii) if the request is granted, until the Commission rules on the appeal or declines to accept the certification. In the event such a request is denied, the Judge, upon motion of the requesting party, shall stay for a period of 5 days the effect of the ruling from which appeal was sought in order to allow the party to petition the Commission for interlocutory appeal of the ruling. The filing with the Commission of a petition for interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling until the Commission denies the petition or rules on the appeal.

(2) Other cases. In all other cases, the filing or granting of a request to certify an interlocutory appeal, or the filing or granting of a petition for interlocutory appeal, shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(f) Briefs. Should the Commission desire briefs on the issues raised by an interlocutory appeal, it shall give notice to the parties. See § 2200.93 Briefs before the Commission.

[44 F.R. 70110, December 5, 1979.]

2200.76—FILING OF BRIEFS AND PROPOSED FINDINGS WITH THE JUDGE; ORAL ARGUMENT AT THE HEARING

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Judge. The Judge may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

SUBPART F—POST HEARING PROCEDURES

2200.90—DECISIONS AND REPORTS OF JUDGES

(a) Upon completion of any proceeding, the Judge shall prepare a decision. When a hearing is held, the decision shall comply with 5 U.S.C. 557. Copies of the decision shall be mailed to all parties. Thereafter, the Judge shall file with the Executive Secretary a report consisting of his decision, the record in support thereof, and any petitions for discretionary review of his decision, or statements in opposition to such petitions, that may be filed in accordance with §2200.91. The Judge shall file his report on the day following the close of the period for filing petitions for discretionary review, or statements in opposition to such petitions, but no

later than the twenty-first day following the date of the mailing of the decision to the parties.

(b)

(1) Promptly upon receipt of the Judge's report, the Executive Secretary shall docket the case and notify all parties of that fact. The date of docketing shall be the date that the Judge's report is made for purposes of section 12(j) of the Act (29 U.S.C. 661).

(2) On or after the date of docketing of the case, all pleadings or other documents that may be filed in the case shall be addressed to the Executive Secretary.

(3) In the event no Commission Member directs review of a decision on or before the thirtieth day following the date of docketing of the Judge's report, the decision of the Judge contained therein shall become a final order of the Commission.

[39 F.R. 40249, November 15, 1974]

2200.91—DISCRETIONARY REVIEW; PETITIONS FOR; STATEMENTS IN OPPOSITION

(a) A party aggrieved by the decision of a judge may submit a petition for discretionary review. An aggrieved party that fails to file a petition for such review by the Commission may be foreclosed from court review of any objection to the judge's decision. *Keystone Roofing Co., Inc. v. Dunlop*, 539 F. 2d 960 (3rd Cir. 1976).

[43 F.R. 4604, February 3, 1978.]

(b)

(1) Except as provided in paragraphs (b) (2) and (3) of this section, any petition must be received by the Judge at his office on or before the twentieth day following his mailing of a copy of the decision to the parties.

(2) When there is no objection by any party, when an expedited proceeding has been directed pursuant to §2200.101, or for other good cause, the Judge is empowered to prescribe a shorter time for filing petitions for discretionary review following the mailing of his decision.

(3) Petitions for review of a Judge's decision may be filed directly with the Executive Secretary subsequent to the filing of the Judge's report. Such petitions will be considered to the extent that time and resources permit. Parties filing such petitions should be aware that any action by a Commission Member directing review must be taken within thirty (30) days following the filing of the Judge's report.

(4) In the case of proposed settlements or other proposed dispositions by consent of all parties, petitions for discretionary review shall not be allowed, except for good cause shown.

[39 F.R. 40249, November 15, 1974.]

(c) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The inclusion of precise citations to the record or legal authorities, as the case may be, will facilitate prompt review of the petition.

[43 F.R. 4604, February 3, 1978.]

(d) Failure to act on such petition within the review period shall be deemed a denial thereof.

(e) Statements in opposition to petitions for discretionary review may be filed at the times and places specified in this section for the filing of petitions for discretionary review. Any Statement shall contain a concise statement on each portion of the petition to which it is addressed.

[39 F.R. 40249, November 15, 1974.]

(f) An original and three copies of any petition or statement shall be filed with the Commission.

[43 F.R. 4604, February 3, 1978.]

2200.92—REVIEW BY THE COMMISSION

(a) Review is a matter of sound discretion of a member of the Commission.

(b) In exercising discretion, a Commission member will consider assertions of the following:

(1) A finding of material fact is not supported by a preponderance of the evidence.

(2) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

(3) A substantial question of law, abuse of discretion, or policy is involved.

(4) A prejudicial error of procedure was committed.

(c) When a petition for discretionary review is granted, review shall be limtied to the issues specified in the petition, unless the order for review expressly provides differently.

(d) At any time within 30 days after the filing of a decision of a judge, a case may also be directed for review by a member upon his own motion upon any ground that could be raised by a party, but the issues would normally be limited to novel questions of law or policy or questions involving conflict in Administrative Law Judges' decisions. Any direction for review shall state the issues with particularity. Except in extraordinary circumstances, the Commission's power to review is limited to issues of law or fact raised by the parties in the proceedings below. (Sec. 12(g) Public Law 91-596, 84 Stat. 1603-1605 (29 U.S.C. 661(f).)

[44 F.R. 70110, December 5, 1979.]

2200.93—BRIEFS BEFORE THE COMMISSION.

(a) **Requests for briefs.** The Commission ordinarily will request the parties to file briefs on issues before the Commission. When briefs are requested, a party may file a letter setting forth its arguments instead of filing a brief. The provisions of this rule shall apply to such letters.

(b) **Time for filing briefs.** When briefs are requested under paragraph (a), a briefing notice shall be issued to the parties at a time reasonably in advance of the date when the case is scheduled for disposition at a Commission meeting. Unless the briefing notice provides otherwise, the time for filing of briefs shall be as follows:

(1) **Appeal by one party.** A party whose petition for review or for interlocutory appeal is granted or whose interlocutory appeal is certified shall file a brief within 40 days after the date of the briefing notice. All other parties shall file briefs within 30 days after the brief of the petitioning or appealing party is served.

(2) **Appeals by two or more parties.** When petitions of two or more parties are directed for review, each such party shall file an initial brief addressing the issues on which it appeals within 40 days after the date of the briefing notice and may file a brief responding to the initial brief of the other party within 30 days after the initial brief of the other party or parties is served. This sequence of briefing shall be followed in the event that two or more parties' petitions for interlocutory appeal are granted or two or more parties's interlocutory appeals are certified.

(3) **Direction for review on the motion of a Commission member.** When no petition for discretionary review is granted and a member directs review of a Judge's decision on his own motion, all briefs shall be filed within 40 days after the date of the briefing notice.

(4) **Additional briefs.** Additional briefs shall not be allowed except by leave of the Commission.

(c) **Motion for extension of time for filing brief.** Any extension of time to file a brief shall not be granted except in extraordinary circumstances. A motion for extension of time to file a brief shall be filed within the time limit prescribed in paragraph (b) of this section and shall include the following information: When the brief is due; the

number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reasons for the extension being requested; and an assurance that the brief will be filed within the time extension requested.

(d) Consequences of late filing of brief. The Commission may decline to accept a brief that is not timely filed.

(e) Length of brief. Except by permission of the Commission, a brief shall contain no more than 35 pages of text.

(f) Table of contents. A brief in excess of 15 pages shall include a table of contents.

(g) Failure to meet requirements. The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) Number of copies. Five copies of a brief shall be filed. See § 2200.7(a).

[44 F.R. 70110, December 5, 1979.]

2200.94—STAY OF FINAL ORDER

(a) Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

[44 F.R. 70110, December 5, 1979.]

2200.95—ORAL ARGUMENT BEFORE THE COMMISSION

(a) Oral argument before the Commission ordinarily will not be allowed.

(b) In the event the Commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

[44 F.R. 70110, December 5, 1979.]

SUBPART G—MISCELLANEOUS PROVISIONS

2200.100—SETTLEMENT.

(a) Policy. Settlement is permitted at any stage of the proceedings. Settlements submitted for consideration after the Judge's decision has been directed for review shall be filed the the Executive Secretary. A settlement proposal shall be approved when it is consistent with the provisions and objectives of the Act.

(b) Requirements. Every settlement proposal submitted to the Judge or Commission shall include, where applicable, the following:

(1) A motion to amend or withdraw a citation, notification of proposed penalty, notice of contest, or petition for modification of abatement;

(2) A statement that payment of the penalty has been tendered or a statement of a promise to pay; and

(3) A statement that the cited condition has been abated or a statement of the date by which abatement will be accomplished.

(c) **Filing; service and notice.** When a settlement proposal is filed with the Judge or Commission, it shall also be served upon represented and unrepresented affected employees in the manner prescribed for notices of contest in § 2200.7. Proof of service shall accompany the settlement proposal. A settlement proposal shall not be approved until at least 10 days following service of the settlement proposal on affected employees.

[44 F.R. 70110, December 5, 1979.]

2200.100a—WITHDRAWAL OF NOTICE OF CONTEST.

At any stage of the proceedings, a party may move to withdraw its notice of contest or any portion of its notice of contest. The motion shall include a statement that a promise of another party has not led to the motion to withdraw the notice of contest. The rule on settlements, § 2200.100, shall apply whenever a promise of another party has led to the party's motion to withdraw.

[44 F.R. 70110, December 5, 1979.]

2200.101—EXPEDITED PROCEEDING

(a) Upon application of any party or intervenor or upon his own motion, any Commissioner may order an expedited proceeding. Contests arising under §§ 2200.34 and 2200.35 shall be placed on a special docket and treated as expedited proceedings before Administrative Law Judges. Cases arising under these sections which are directed for review before the Commission shall also be placed on a special docket for review, and shall be treated as expedited proceedings under this section.

[43 F.R. 4604, February 3, 1978.]

(b) When such proceeding is ordered, the Executive Secretary shall notify all parties and intervenors.

(c) The Judge assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

2200.102—STANDARDS OF CONDUCT

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the United States.

2200.103—EX PARTE COMMUNICATION

(a) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the Commission, including any member, officer, employee, or agent of the Commission who is employed in the decisional process, and any of the parties or intervenors.

(b) In the event such ex parte communication

occurs, the Commission or the Judge may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

2200.104—RESTRICTIONS AS TO PARTICIPATION BY INVESTIGATIVE OR PROSECUTING OFFICERS

In any proceeding noticed pursuant to the rules in this part, the Secretary shall not participate or advise with respect to the report of the Judge or the Commission decision.

2200.105—INSPECTION AND REPRODUCTION OF DOCUMENTS

(a) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the Commission, inspect and copy any document filed in any proceeding.

(b) Costs shall be borne by such person.

2200.106—RESTRICTIONS WITH RESPECT TO FORMER EMPLOYEES

(a) No former employee of the Commission or the Secretary (including a member of the Commission or the Secretary) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

(b) No former employee of the Commission or the Secretary (including a member of the Commission or the Secretary) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless 1 year has elapsed since the termination of such employment.

2200.107—AMENDMENTS TO RULES

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. Such suggestions should be addressed to the Commission at 1825 K Street, NW., Washington, D.C. 20006.

2200.108—SPECIAL CIRCUMSTANCES; WAIVER OF RULES

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the Commission may, upon application by party or intervenor, or on its own motion, after 3 days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

2200.109—PENALTIES

(a) All penalties assessed by the Commission are Civil.

(b) The Commission has no jurisdiction under § 17(e), (f), and (g) of the Act and will conduct no proceeding thereunder.

2200.110—OFFICIAL SEAL OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

SUBPART M—SIMPLIFIED PROCEEDINGS

2200.200—PURPOSE.

(a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may save time and expense while preserving fundamental procedural fairness. The rules shall be construed and applied to accomplish these ends.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are the following:

(1) Pleadings generally are not permitted or required. Early discussions among the parties will inform the parties of the legal and factual matters in dispute and narrow the issues to the extent possible.

(2) Discovery is generally not permitted.

(3) The Federal Rules of Evidence do not apply.

(4) Interlocutory appeals are not permitted.

2200.201—APPLICATION.

The rules in this subpart shall govern proceedings before an Administrative Law Judge when (a) the case is eligible for simplified proceedings under § 2200.202, (b) any party requests simplified proceedings, and (c) no party files an objection to the request.

2200.202—ELIGIBILITY FOR SIMPLIFIED PROCEEDINGS.

A case is eligible for simplified proceedings unless it concerns an alleged violation of section 5(a)(1) of the Act (29 U.S.C. 654(a)(1)) or an alleged failure to comply with a standard listed in table A.

Table A

All standards listed are found in title 29 of the Code of Federal Regulations.

§ 1910.94	§ 1910.96
§ 1910.95	§ 1910.97

§§ 1910.1000 to § 1910.1045, and any occupational health standard that may be added to subpart Z of part 1910.

§ 1926.52	§ 1926.55
§ 1926.53	§ 1926.57
§ 1926.54	§ 1926.800(c)

2200.203 COMMENCING SIMPLIFIED PROCEEDINGS.

(a) Requesting simplified proceedings.

(1) Who may request. Any party may request simplified proceedings.

(2) When to request. After the Commission receives an employer's or employees' notice of contest or petition for modification of abatement, the Executive Secretary shall issue a notice indicating that the case has been docketed. A request for simplified proceedings, if any, shall be filed within 10 days after the notice of docketing is received, unless the notice of docketing states otherwise.

(3) How to request. A simple statement is all that is necessary. For example, "I request simplified proceedings" will suffice. The request shall be filed with the Executive Secretary and served in the manner prescribed for notices of contest in § 2200.7.

(4) Effect of the request. For those cases eligible under § 2200.202, simplified proceedings are in effect when any party requests simplified proceedings and no party files a timely objection to the request.

(b) Objecting to simplified proceedings.

(1) Who may object. Any party may object to a request for simplified proceedings.

(2) When to object. An objection shall be filed within 15 days after the request for simplified proceedings is served.

(3) How to object. A simple statement is all that is necessary. For example, "I object to simplified proceedings" will suffice. An objection shall be filed with the Executive Secretary and served in the manner prescribed for notices of contest in § 2200.7.

(4) Effect of the objections. The filing of a timely objection shall preclude the institution of simplified proceedings.

(c) Notice.

(1) When the period for objecting to simplified proceedings expires and no objection has been filed, the Commission shall notify all parties that simplified proceedings are in effect.

(2) When a party files a timely objection to a request for simplified proceedings, the Commission shall notify all parties that the case shall continue under conventional procedures (Subparts A through G).

2200.204 FILING OF PLEADINGS.

(a) **Complaint and answer.** There shall be no complaint or answer in simplified proceedings. If the Secretary has filed a complaint under § 2200.33, a response to an employee contest under § 2200.35, or a response to a petition under § 2200.34, the complaint or response shall not be included in the record. No response to these documents shall be required.

(b) **Motions.** A primary purpose of simplified proceedings is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion has not been first discussed among the parties prior to the conference/hearing.

2200.205 DISCUSSION AMONG PARTIES.

Within a reasonable time before the conference/hearing, the parties shall meet, or confer by telephone, and discuss the following: Settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; ons; and any other pertinent matter.

2200.206 CONFERENCE/HEARING

(a) The Judge shall schedule and preside over a conference/hearing, which shall be divided into two segments: a conference and a hearing.

(b) **Conference.** At the beginning of the conference, the Judge shall enter into the record all agreements reached by the parties as well as defenses raised during the discussion set forth in § 2200.205. The parties and the Judge then shall attempt to resolve or narrow the remaining issues. At the conclusion of the conference, the Judge shall enter into the record any further agreements reached by the parties.

(c) **Hearing.** The Judge shall hold a hearing on any issue that remains in dispute at the conclusion of the conference. The hearing shall be in accordance with 5 U.S.C. 554.

(1) **Evidence.** Oral or documentary evidence shall be received, but the Judge may exclude irrelevant or unduly repetitious evidence. Testimony shall be given under oath. The Federal Rules of Evidence shall not apply.

(2) **Oral and written argument.** Each party may present oral argument at the close of the hearing. Parties wishing to present written argument shall notify the Judge at the conference/hearing so that the Judge may set a reasonable period for the prompt filing of written argument.

2200.207 REPORTER PRESENT; TRANSCRIPTS.

A reporter shall be present at the conference/hearing. An official verbatim transcript of the hearing shall be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

2200.208 DECISION OF THE JUDGE.

(a) The Judge shall issue a written decision in accordance with § 2200.90.

(b) After the issuance of the Judge's decision, the case shall proceed in the conventional manner (Subparts A through G).

2200.209 DISCOVERY.

Discovery, including requests for admissions, shall not be allowed except by order of the Judge.

2200.210 INTERLOCUTORY APPEALS NOT PERMITTED.

Appeals to the Commission of a ruling made by a Judge which is not the Judge's final disposition of the case are not permitted.

2200.211 APPLICABILITY OF SUBPARTS A THROUGH G.

Sections 2200.6, 2200.33, 2200.34(d)(4), 2200.35, 2200.36, 2200.38, and 2200.75 shall not apply to simplified proceedings. All other rules contained in subparts A through G of the Commission's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.

[44 F.R. 70110, December 5, 1979.]

☆ U.S. GOVERNMENT PRINTING OFFICE : 1980 O—311-411/1

JUN 2 7 1980 Item 766-F
L 35.6/3-4:978/ch.4
cont'd

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SUBSCRIPTION SERVICE

311-411
575
9076

VOLUME IV- OTHER REGULATIONS AND PROCEDURES

CHANGE 4—JUNE 6, 1980

OSHA 2080

INTRODUCTION

This change incorporates the following changes and additions published in the Federal Register:

1. Adds 29CFR1952.125. (See 45 F.R. 6543, 1/29/80.)
2. Amends 29CFR1952.175. (See 45 F.R. 8594, 2/8/80.)
3. Amends 29CFR1952.234. (See 45 F.R. 8595, 2/8/80.)

INSTRUCTIONS

1. Substitute or add the attached pages as indicated in the following table:

Remove Existing Page	*Insert Change Page*
Title/A	Title/A
233/234	233/234
245 thru 248	245 thru 248
259/260	259/260
.....	260.1/260.2

2. Enter a record of this change on page i.
3. Retain this cover sheet as a record of the contents of this change.

Other Regulations & Procedures

MARCH, 1978

CHANGE 4—JUNE 6, 1980

U.S. Department of Labor
Ray Marshall, Secretary

Occupational Safety and Health Administration
Eula Bingham, Assistant Secretary

Volume IV OSHA 2080

LIST OF EFFECTIVE PAGES

TOTAL NUMBER OF PAGES IS 548 AS FOLLOWS:

Page No.	*Issue*	*Page No.*	*Issue*
*Title	Change 3	273 thru 278.2	Change 2
*A	Change 3	279 thru 281	Original
i thru vi	Original	282	Change 2
1 thru 50	Original	283 thru 290	Original
51 thru 56	Change 1	291 thru 292	Change 3
56.1/56.2	Change 1	293 thru 294	Original
56.3/56.4	Change 2	295 thru 297	Change 2
57 thru 211	Original	298	Original
212 thru 214	Change 2	299 thru 304	Change 2
215	Change 3	305 thru 330	Original
216 thru 224	Original	331	Change 2
225/226	Change 2	332 thru 339	Original
227 thru 232	Original	340 thru 340.2	Change 2
*233	Change 4	341 thru 404	Original
234 thru 240	Original	405	Change 2
241	Change 2	406	Change 3
242/243	Original	406.1 thru 406.2	Change 3
244	Change 2	407 thru 409	Original
*245 thru 248	Change 4	410	Change 3
249 thru 253	Original	411	Original
254	Change 3	412	Change 3
254.1 thru 254.2	Change 3	413	Original
255 thru 256	Original	414	Change 2
257 thru 258	Change 2	415	Change 3
258.1 thru 258.2	Change 2	416 thru 420	Original
259 thru 260	Change 4	421 thru 424	Change 3
*260.1 thru 260.2	Change 4	424.1 thru 424.6	Change 3
261 thru 264	Original	425 thru 426	Change 3
265 thru 266	Change 3	427 thru 436	Original
266.1 thru 266.2	Change 3	437/438	Change 2
267 thru 272	Original	439 thru 526	Original

*Indicate pages changed, added, or deleted by the current change

1952.124—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with the requirements of § 1952.123(a) the Washington Industrial Safety and Health Act of 1973, hereinafter referred to as WISHA (S.B. 2886, RCW Chapter 49.17), signed by the Governor on March 9, 1973, effective on June 7, 1973, was approved July 3, 1974 (39 FR 25326).

(b) In accordance with the requirements of § 1952.10, the Washington State Poster submitted on October 6, 1975, was approved by the Assistant Secretary on December 17, 1975.

[40 F.R. 59345, December 23, 1975.]

(c) The Washington State Compliance Operations Manual which is modeled after the Federal Field Operations Manual has been developed by the State, and was approved by the Assistant Secretary on March 19, 1976.

(d) In accordance with § 1952.123(c), Washington regulations covering Reassumption of Jurisdiction were adopted by June 7, 1974 and were approved by the Assistant Secretary on March 19, 1976.

[41 F.R. 12655, March 26, 1976.]

(e) In accordance with § 1952.123(e) Washington has completed the training as described in this section.

(f) In accordance with § 1952.123(d) Washington has developed and implemented a computerized Management Information System.

[41 F.R. 17548, April 27, 1976.]

(g) In accordance with § 1952.123(f) Washington has completed the upgrading of salaries of safety personnel.

[41 F.R. 23672, June 11, 1976.]

(h) In accordance with § 1952.123(c) Washington has adopted rules and regulations covering recordkeeping and reporting requirements.

[41 F.R. 51016, November 19, 1976.]

1952.125—CHANGES TO APPROVED PLANS

(a) In accordance with Subpart C of Part 1953 of this Chapter, the following Washington plan changes were approved by the Assistant Secretary on January 22, 1980.

(1) **Walkaround pay for employee representatives.** This supplement provides guidelines for compliance personnel when the employee representative's participation in the inspection is influenced by the employer's refusal to pay the representative for the time involved.

(2) **Employee complaint processing procedures.** This supplement provides guidelines for the scheduling, review, and investigation of employee complaints concerning alleged unsafe and unhealthful conditions at the workplace.

[45 F.R. 6543, January 29, 1980.]

SUBPART G AND H—RESERVED

SUBPART I—NORTH CAROLINA

1952.150—DESCRIPTION OF THE PLAN

(a) The Department of Labor has been designated by the Governor of North Carolina to administer the plan throughout the State. The Department of Labor has entered into an agreement with the State Board of Health whereby the State Board of Health is to assist the Department of Labor in the administration and enforcement of occupational health standards. However, full authority for the promulgation and enforcement of occupational safety and health standards remains with the Department of Labor. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter. Moreover, it is understood that the plan will cover all employers and employees in the State except those whose working conditions are not covered by the Federal act by virtue of Section 4(b)(1) thereof, dockside maritime and domestic workers. The Department of Labor is currently exercising statewide inspection authority to enforce many State standards. The plan describes procedures for the development and promulgation of additional laws, and orders in all places of employment in the Stae; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspections in response to complaints.

(b) The plan includes proposed draft legislation to be considered by the North Carolina General Assembly during its 1973 session. Such legislation is designed to implement major portions of the plan and to bring it into conformity with the requirements of Part 1902 of this chapter.

(c) Under this legislation, all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in Parts 1915, 1916, 1917, and 1918 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring) will be adopted upon ratification of the proposed legislation. Enforcement of such standards will take place 90 days thereafter.

(d) The legislation will give the Department of Labor full authority to administer and enforce all laws, rules and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances.

(e) The proposed legislation will insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections: protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer's right to review of alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

(f) The Plan also provides for the development of a program to encourage voluntary compliance by employers and employees.

(g) The Plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of North Carolina. The Plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation by the State legislature.

(h) The North Carolina Plan includes the following documents as of the date of approval:

(o) Enforcement of standards pertaining to temporary labor camps was implemented in March 1977.

[42 F.R. 37549, July 22, 1977.]

(p) In accordance with § 1903.34 of this chapter, the California occupational safety and health plan was certified, effective August 12, 1977, as having completed all developmental steps specified in the plan as approved on April 24, 1973, on or before June 1, 1976, with the exception that temporary labor camp standards development and enforcement program was completed on March 11, 1977.

[42 F.R. 41858, August 19, 1977.]

1952.175 CHANGES TO APPROVED PLANS

(a) In accordance with Subpart E of Part 1953 of this Chapter, the California carcinogen program implemented on January 1, 1977, was approved by the Assistant Secretary on March 6, 1978.

[43 F.R. 9806, March 10, 1978.]

(b) On Januray 1, 1978, the California Department of Industrial Relations became the agency designated to administer the California Occupational Safety and Health Plan.

[44 F.R. 36384, June 22, 1979.]

(c) In accordance with Subpart C of Part 1953, of this Chapter, California amended its employer recordkeeping and reporting requirements effective November 4, 1978, so as to provide employee access to the employer's log and summary of occupational injuries and illnesses.

[45 F.R. 8594, February 8, 1980.]

SUBPART L AND M—RESERVED

SUBPART N—MINNESOTA

1952.200—DESCRIPTION OF THE PLAN

(a) The Department of Labor and Industry is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). The commissioner of the Department of Labor and Industry adopted Federal standards promulgated as of October 1972, effective in Minnesota February 1973. The commissioner will continue to adopt Federal standards and will retain those Minnesota standards not covered by Federal standards. The plan contains a list of the Federal standards adopted and the State standards that will be retained. These standards will be enforced according to current legislative authority in Minnesota prior to the effective date of Minnesota's enabling legislation submitted as part of the plan.

(b)

(1) The plan includes legislation enacted by the Minnesota legislature during its 1973 session. Under the legislature the Department of Labor and Industry will have full authority to enforce and administer laws.

(2) The legislation further proposed to bring the plan into conformity with the requirments of 29 CFR, part 1902 in areas such as procedures for granting or denying temporary and permanent variances by the commissioner; protection of employees from hazards; procedures for the development and promulgation of standards by the commissioner, including emergency temporary stnadards; and procedures for prompt restraint or elimination of imminent danger situations by issuance of a "red-tag" order effective for 3 days as well as by court injunction.

(3) The legislation is also intended to insure inspections in response to respecting safety and health of employees in all workplaces of the State, including coverage of public employees with the exception of maritime workers in the areas of exclusive Federal jurisdiction, employees of the United States, and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under the provisions of section 4(b)(1) of the Occupational Safety and Health Act of 1970.

the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 665(c)), in the issues covered under the plan and the agreement until such time as Kentucky shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; Standards in 29 CFR 1910.13 through 1910.16, which issues have been specifically excluded from coverage under the Kentucky plan; and Investigations and inspections for the purpose of the evaluation of the Kentucky plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Assistant Regional Director for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Kentucky.

[39 F.R. 1512, January 8, 1975.]

1952.233—DEVELOPMENTAL SCHEDULE

The Kentucky state plan is developmental. The following is the developmental schedule as provided by the plan:

(a) A comprehensive public employee program will be developed within three years of plan approval.

(b) Within six months after plan approval, the procedure for the promulgation of standards will be revised.

(c) An affirmative action program will be submitted to the Assistant Secretary as well as clearance of possible inconsistencies of the State Merit System by the Civil Service Commission within six months after grant approval.

(d) Revision of various regulations, including those pertaining to employee access to information on their exposure to toxic materials or harmful physical agents and contests before the Review Commission will be undertaken within six months after plan approval.

(e) Submission of amendments to KRS Chapter 338 in 1974 General Assembly, to provide temporary variance authority and incorporate in that Chapter penalties for willful violations causing death.

[38 F.R. 20322, July 31, 1973.]

1952.234—COMPLETED DEVELOPMENTAL STEP

(a) In accordance with the requirements of § 1952.10 the Kentucky Safety and Health Poster for private and public employees was approved by the Assistant Secretary on May 20, 1976.

(b) Amendments in the Kentucky enabling legislation were enacted to include (1) a division of occupational safety and health compliance and a division of education and training (KRS 333.153(a)) and (2) authority and procedures for granting temporary variances. Penalties for willful violations causing death of an employee are covered under KRS chapters 434, 503 and 534.

(c) An amended Kentucky Administrative Procedure Act (KRS-Chapter 13) provides procedures for promulgation of standards and administrative regulations including emergency temporary standards.

(d) Kentucky regulations governing recordkeeping and reporting (parallel to the Federal 29/CFR Part 1904), inspections, citations, proposed penalties (parallel to the Federal 29 CFR Part 1903) and variances (parallel to the Federal 29 CFR Part 1905) were initially approved with the state plan on July 31, 1973. These regulations were expanded to provide for (1) penalties for failure to correct violations; (2) mandatory penalties for failure to post a citation; (3) procedures

for petition for modification of abatement dates and (4) procedures for granting temporary variances. In addition, Kentucky adopted regulations pertaining to employee access to information on exposure to toxic materials or harmful physical agents.

(e) A manual Management Information System was implemented in July, 1975, and converted to an automated system in July, 1977.

(f) The personnel operations of the Kentucky Department of Labor and the servicing merit system agency have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by letter of the Secretary of Labor dated May 17, 1977. In addition, a Kentucky Department of Labor affirmative action plan to promote equal employment opportunity has been judged acceptable by the Regional Office of Personnel/Management by letter dated February 12, 1979.

(g) Kentucky revised regulations governing the operation of the Kentucky Occupational Safety and Health Review Commission were promulgated in December, 1975.

(h) A revised Kentucky Compliance Manual was initially submitted in July, 1976, and subsequently amended in response to Federal comment to reflect changes in Federal procedures through December 20, 1976.

(i) By executive orders 74-374 and 77-573 dated May 15, 1974, and June 30, 1977, respectively, the Governor of Kentucky made the following changes in the organization of the Kentucky Occupational Safety and Health Program:

(1) All occupational health functions except laboratory services were transferred from Kentucky Department of Human Resources to the Kentucky Department of Labor.

(2) Responsibilities for coverage of employees of public utilities were transferred from the Kentucky Public Service Commission to the Kentucky Department of Labor.

(j) A Kentucky Public Employee plan has been adopted by the State.

(k) In accordance with § 1902.34 of this chapter, the Kentucky occupational safety and health plan received certification, effective February 8, 1980, as having completed all developmental steps specified in its plan as approved on July 31, 1973, on or before July 31, 1976. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[45 F.R. 8595, February 8, 1980.]

SUBPART R—ALASKA

1952.240—DESCRIPTION OF THE PLAN

(a) The Department of Labor is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2 (c)(1) of this chapter under four major codes for general safety industrial housing, electrical hazards, and occupational health and environmental controls. The plan also includes vertical special industry codes for construction, wood products, petroleum, and fishing. Appendix G of the plan contains a timetable for adoption of the standards beginning with the effective date of the grant approved under section 23(g) of the Act. The timetable requires from 6 to 36 months for completion of the standard-setting process with most of the standards to be adopted within 6 months of the effective date of the grant.

(b)

(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor amending Chapter 18 of the Alaska Statutes. Under the legislation, effective July 24, 1973, the Department of Labor has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exceptions of maritime workers in the area of exclusive Federal jurisdiction; employees of the United States; employees protected by State agencies under the Atomic Energy Act of 1954, (42 U.S.C. 2021); and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under the provisions of section 4(b)(1) of the Occupational Safety and health Act of 1970 (84 Stat. 1592, 29 U.S.C. 653(b)(1)).

(2) The legislation brings the plan into conformity with the requirements of Part 1902 of this chapter in areas such as procedures for granting or denying permanent and temporary variances to standards by the Commissioner; protection of employees from hazards; promulgation of standards by the Commissioner prescribing requirements "at least as effective" as the requirements for Federal standards including medical examinations and monitoring and measuring of hazards; imminent danger abatement by administrative order and court injunction; protection of employees against discharge or discrimination in terms or conditions of employment by filling complaints with the Commissioner who will seek court action through the State Attorney General; and adequate safeguards to protect trade secrets.

(3) The legislation provides for inspections, including inspections in response to complaints; gives employers and employee representatives an opportunity to accompany inspectors in order to aid inspections and provides for payment to employees for time spent in aiding an inspection; notification of employees or their representatives when no compliance action is taken as a result of an alleged violation, including informal review; notification of employees of their protections and obligations through legislative requirements on posting; provision for prompt notice to employers and employees of alleged violations of standards, and abatement requirements, through the issuance and posting of citations; a system of sanctions against employers for violations of standards; employer right of review to the Occupational Safety and Health Review Board; and employee participation in the review procedure with compensation for time spent by the employee.

(c) Included in the plan is a statement of legal opinion that the law, which was supported by the Governor in accordance with the requirements of Part 1902 of this chapter, is consistent with the Constitution and laws of Alaska.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1980 311-411/3

AUG 11 1980
311-411
Item 766-F
L 35.6/3-4:978/ch.5
5 70

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SUBSCRIPTION SERVICE

9026
CONTIN

VOLUME IV- OTHER REGULATIONS AND PROCEDURES

CHANGE 5—JULY 30, 1980

OSHA 2080

INTRODUCTION

This change incorporates the following addition published in the Federal Register:

1. Adds 29CFR1913. (See 45 F.R. 35294, 5/23/80.)

INSTRUCTIONS

1. Substitute or add the attached pages as indicated in the following table:

Remove Existing Page	*Insert Change Page*
Title/A	Title/A
37/38	37/38
.....	38.1/38.2
137/138	137/138
.....	138.1 thru 138.6

2. Enter a record of this change on page i.
3. Retain this cover sheet as a record of the contents of this change.

Other Regulations & Procedures

MARCH, 1978

CHANGE 5—JULY 30, 1980

U.S. Department of Labor
Ray Marshall, Secretary

Occupational Safety and Health Administration
Eula Bingham, Assistant Secretary

Volume IV OSHA 2080

LIST OF EFFECTIVE PAGES

TOTAL NUMBER OF PAGES IS **556** AS FOLLOWS:

Page No.	*Issue*	*Page No.*	*Issue*
*Title	Change 5	266.1 thru 266.2	Change 3
*A	Change 5	267 thru 272	Original
i thru vi	Original	273 thru 278.2	Change 2
1 thru 37	Original	279 thru 281	Original
*38 thru 38.2	Change 5	282	Change 2
39 thru 50	Original	283 thru 290	Original
51 thru 56	Change 1	291 thru 292	Change 3
56.1/56.2	Change 1	293 thru 294	Original
56.3/56.4	Change 2	295 thru 297	Change 2
57 thru 136	Original	298	Original
137 thru 138	Change 5	299 thru 304	Change 2
138.1 thru 138.6	Change 5	305 thru 330	Original
139 thru 211	Original	331	Change 2
212 thru 214	Change 2	332 thru 339	Original
215	Change 3	340 thru 340.2	Change 2
216 thru 224	Original	341 thru 404	Original
225/226	Change 2	405	Change 2
227 thru 232	Original	406	Change 3
233	Change 4	406.1 thru 406.2	Change 3
234 thru 240	Original	407 thru 409	Original
241	Change 2	410	Change 3
242/243	Original	411	Original
244	Change 2	412	Change 3
245 thru 248	Change 4	413	Original
249 thru 253	Original	414	Change 2
254	Change 3	415	Change 3
254.1 thru 254.2	Change 3	416 thru 420	Original
255 thru 256	Original	421 thru 424	Change 3
257 thru 258	Change 2	424.1 thru 424.6	Change 3
258.1 thru 258.2	Change 2	425 thru 426	Change 3
259 thru 260	Change 4	427 thru 436	Original
260.1 thru 260.2	Change 4	437/438	Change 2
261 thru 264	Original	439 thru 526	Original
265 thru 266	Change 3		

*Indicate pages changed, added, or deleted by the current change

(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are peformed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicains, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(c) Copies of the Act, all regulations published in this chapter and all applicable standards will be available at all Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

1903.3—AUTHORITY FOR INSPECTION

(a) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education, and Welfare under section 8 of the Act and pursuant to this Part 1903 shall not affect the authority of any State to conduct inspections in accordance with agreements and plans under section 18 of the Act.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

1903.4—OBJECTION TO INSPECTION

(a) Upon a refusal to permit a Compliance Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with § 1903.3, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with § 1903.8, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Area Director. The Area Director shall consult with the Regional Solicitor, who shall take appropriate action, including compulsory process, if necessary.

(b) Compulsory process may be sought in advance of an inspection or investigation if, in the judgment of the Area Director and the Regional Solicitor, circumstances exist which make preinspection process desirable or necessary.

(c) With the approval of the Regional Administrator and the Regional Solicitor, compulsory process may also be obtained by the Area Director or his designee.

(d) For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

[43 FR 59839, Dec. 22, 1978]

1903.5—ENTRY NOT A WAIVER

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

1903.6—ADVANCE NOTICE OF INSPECTIONS

(a) Advance notice of inspections may not be given, except in the following situations: (1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible; (2) in circumstances where the inspection can most effectivley be conducted after regular business hours or where special preparations are necessary for an inspection; (3) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and (4) in other circumstances where the Area Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Area Director, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Safety and Health Officer without such authorization if the Area Director is not immediately available. When advance notice is given it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative

is known to the employer. (See § 1903.8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is

PART 1913

RULES OF AGENCY PRACTICE AND PROCEDURE CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

1913.10 Rules of agency practice and procedure concerning OSHA access to employee medical records.

AUTHORITY: Secs. 8(c) and 8(g) (84 Stat. 1599, 1600; 29 U.S.C. 657), section (e) of the Privacy Act (88 Stat. 1899, 1900; 5 U.S.C. 552a(e)), and 5 U.S.C. 301 (80 Stat. 379).

SOURCE: The provisions of this part 1913 appear at 45 F.R. 35294, May 23, 1980 unless otherwise noted.

1913.10—RULES OF AGENCY PRACTICE AND PROCEDURE CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

(a) General policy. OSHA access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, OSHA authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, OSHA examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by OSHA only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

(b) Scope and application.

(1) Except as provided in paragraphs (b)(3)-(b)(6) below, this section applies to all requests by OSHA personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 CFR 1910.20(e).

(2) For the purposes of this section, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

(3) This section does not apply to OSHA access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This section does not apply to records required by 29 CFR Part 1904, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.20(c)(5) or by specific occupational safety and health standards as exposure records.

(4) This section does not apply where OSHA compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.20. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the recordholder. The OSHA compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

(5) This section does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(6) This section does not apply where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

(7) Even if not covered by the terms of this section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public (*See*, 29 CFR 70.26 & 70a.3).

(c) Responsible persons.

(1) Assistant Secretary. The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) shall be responsible for the overall administration and implementation of the procedures contained in this section, including making final OSHA determinations concerning:

(i) Access to personally identifiable employee medical information (paragraph (d)), and

(ii) Inter-agency transfer or public disclosure of personally identifiable employee medical information (paragraph (m)).

(2) OSHA Medical Records Officer. The Assistant Secretary shall designate an OSHA official with experience or training in the evaluation, use, and privacy protection of medical records to be the OSHA Medical Records Officer. The OSHA Medical Records Officer shall report directly to the Assistant Secretary on matters concerning this section and shall be responsible for:

(i) Making recommendations to the Assistant Secretary as to the approval or denial of written access orders (paragraph (d)),

(ii) Assuring that written access orders meet the requirements of paragraphs (d)(2) and (d)(3) of this section.

(iii) Responding to employee, collective bargaining agent, and employer objections concerning written access orders (paragraph (f)),

(iv) Regulating the use of direct personal identifiers (paragraph (g)),

(v) Regulating internal agency use and security of personally identifiable employee medical information (paragraphs (h)-(j)),

(vi) Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees (paragraph (k)),

(vii) Preparing an annual report of OSHA's experience under this section (paragraph (l)), and

(viii) Assuring that advance notice is given of intended inter-agency transfers or public disclosures (paragraph (m)).

(3) Principal OSHA Investigator. The Principal OSHA Investigator shall be the OSHA employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section (paragraphs (d)-(m). When access is pursuant to a written access order, the Principal OSHA Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

(d) Written access orders.

(1) Requirement for written access order. Except as provided in paragraph (d)(4) below, each request by an OSHA representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the Assistant Secretary upon the recommendations of the OSHA Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by, an administrative subpoena.

(2) Approval criteria for written access order. Before approving a written access order, the Assistant Secretary and the OSHA Medical Records Officer shall determine that:

(i) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

(ii) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

(iii) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

(3) Content of written access order. Each written access order shall state with reasonable particularity:

(i) The statutory purposes for which access is sought,

(ii) A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information,

(iii) Whether medical information will be examined on-site, and what type of information will be copied and removed off-site,

(iv) The name, address, and phone number of the Principal OSHA Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

(v) The name, address, and phone number of the OSHA Medical Records Officer, and

(vi) The anticipated period of time during which OSHA expects to retain the employee medical information in a personally identifiable form.

(4) Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

(i) **Specific written consent.** If the specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal OSHA Investigator shall be promptly named to assure protection of the information, and the OSHA Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs (h)-(m) of this section.

(ii) **Physician consultations.** A written access order need not be obtained where an OSHA staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the OSHA physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records, however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the OSHA physician shall leave his or her control without the permission of the OSHA Medical Records Officer.

(e) Presentation of written access order and notice to employees.

(1) The Principal OSHA Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal OSHA Investigator or to the OSHA Medical Records Officer.

(2) The Principal OSHA Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

(3) The Principal OSHA Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter (*See*, 29 CFR 1910.20(e)(3)(ii)).

(4) The Principal OSHA Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal OSHA Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

(f) Objections concerning a written access order. All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the OSHA Medical Records Officer. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The OSHA Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to OSHA access. Where appropriate, the OSHA Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The Principal OSHA Investigator shall assure that such instructions by the OSHA Medical Records Officer are promptly implemented.

(g) Removal of direct personal identifiers. Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal OSHA Investigator shall, unless otherwise authorized by the OSHA Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal OSHA Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

(h) Internal agency use of personally identifiable employee medical information.

(1) The Principal OSHA Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section

(2) The Principal OSHA Investigator, the OSHA Medical Records Officer, the Assistant Secretary, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No OSHA employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Office of the Solicitor of Labor, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(4) OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purpose for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of paragraphs (d)-(g) of this section are repeated with respect to the secondary purpose.

(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

(i) Security procedures.

(1) Agency files containing personally identifiable employee medical information shall be

segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(2) The OSHA Medical Records Officer and the Principal OSHA Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(4) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(5) Intra-agency transfer of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

(j) Retention and destruction of records.

(1) Consistent with OSHA records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(2) Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

(k) Results of an agency analysis using personally identifiable employee medical information. The OSHA Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(l) Annual report. The OSHA Medical Records Officer shall on an annual basis review OSHA's experience under this section during the previous year, and prepare a report to the Assistant Secretary which shall be made available to the public. This report shall discuss:

(1) the number of written access orders approved and a summary of the purposes for access.

(2) the nature and disposition of employee, collective bargaining agent, and employer written objections concerning OSHA access to personally identifiable employee medical information, and

(3) the nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

(m) Inter-agency transfer and public disclosure.

(1) Personally identifiable employee medical information shall not be transferred to another agency or office outside of OSHA (other than to the Office of the Solicitor of Labor) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the Assistant Secretary.

(2) Except as provided in paragraph (m)(3) below, the Assistant Secretary shall not approve a request for an interagency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

(i) needs the requested information in a personally identifiable form for a substantial public health purpose,

(ii) will not use the requested information to make individual determinations concerning affected employees which could be to their detriment,

(iii) has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section, and

(iv) satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (*See*, 5 U.S.C. 552a(b); 29 CFR 70a.3).

(3) Upon the approval of the Assistant Secretary, personally identifiable employee medical information may be transferred to:

(i) the National Institute for Occupational Safety and Health (NIOSH) and

(ii) the Department of Justice when necessary with respect to a specific action under the Occupational Safety and Health Act.

(4) The Assistant Secretary shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

(5) The Assistant Secretary shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy (*See*, 5 U.S.C. 552(b)(6); 29 CFR 70.26).

(6) Except as to inter-agency transfers to NIOSH or the Department of Justice, the OSHA Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that OSHA intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the OSHA Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be transferred or disclosed contains direct personal identifiers.

(n) Effective date. This section shall become effective on August 21, 1980.

U. S. GOVERNMENT PRINTING OFFICE : 1980 311-411/5 (543)

NOV 2 5 1980

766-F

L 35.6/3-4:978/ch.6

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SUBSCRIPTION SERVICE

311-411
Copies 560

9026

Omitted

VOLUME IV- OTHER REGULATIONS AND PROCEDURES

CHANGE 6—SEPTEMBER 30, 1980

OSHA 2080

INTRODUCTION

This change incorporates the following changes and additions published in the Federal Register:

1. Amends 29CFR1913.10(l)(1). (See 45 F.R. 54334, 8/15/80.)
2. Adds 29CFR1952.254(j)-(k). (See 45 F.R. 56054, 8/22/80.)
3. Amends 29CFR1952.383. (See 45 F.R. 54334, 8/15/80.)

INSTRUCTIONS

1. Substitute the attached pages as indicated in the following table:

Remove Existing Page	*Insert Change Page*
Title/A	Title/A
138.3/138.4	138.3/138.4
265/266	265/266
291/292	291/292

2. Enter a record of this change on page i.
3. Retain this cover sheet as a record of the contents of this change.

Other Regulations & Procedures

MARCH, 1978

CHANGE 6—SEPTEMBER 30, 1980

U.S. Department of Labor
Ray Marshall, Secretary

Occupational Safety and Health Administration
Eula Bingham, Assistant Secretary

Volume IV OSHA 2080

LIST OF EFFECTIVE PAGES

TOTAL NUMBER OF PAGES IS **556** AS FOLLOWS:

Page No.	*Issue*	*Page No.*	*Issue*
*Title	Change 6	266	Change 3
*A	Change 6	266.1 thru 266.2	Change 3
i thru vi	Original	267 thru 272	Original
1 thru 37	Original	273 thru 278.2	Change 2
38 thru 38.2	Change 5	279 thru 281	Original
39 thru 50	Original	282	Change 2
51 thru 56	Change 1	283 thru 290	Original
56.1/56.2	Change 1	*291	Change 6
56.3/56.4	Change 2	292	Change 3
57 thru 136	Original	293 thru 294	Original
137 thru 138	Change 5	295 thru 297	Change 2
138.1 thru 138.3	Change 5	298	Original
*138.4	Change 6	299 thru 304	Change 2
138.5 thru 138.6	Change 5	305 thru 330	Original
139 thru 211	Original	331	Change 2
212 thru 214	Change 2	332 thru 339	Original
215	Change 3	340 thru 340.2	Change 2
216 thru 224	Original	341 thru 404	Original
225/226	Change 2	405	Change 2
227 thru 232	Original	406	Change 3
233	Change 4	406.1 thru 406.2	Change 3
234 thru 240	Original	407 thru 409	Original
241	Change 2	410	Change 3
242/243	Original	411	Original
244	Change 2	412	Change 3
245 thru 248	Change 4	413	Original
249 thru 253	Original	414	Change 2
254	Change 3	415	Change 3
254.1 thru 254.2	Change 3	416 thru 420	Original
255 thru 256	Original	421 thru 424	Change 3
257 thru 258	Change 2	424.1 thru 424.6	Change 3
258.1 thru 258.2	Change 2	425 thru 426	Change 3
259 thru 260	Change 4	427 thru 436	Original
260.1 thru 260.2	Change 4	437/438	Change 2
261 thru 264	Original	439 thru 526	Original
*265	Change 6		

*Indicate pages changed, added, or deleted by the current change

(4) The Principal OSHA Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal OSHA Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

(f) Objections concerning a written access order. All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the OSHA Medical Records Officer. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The OSHA Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to OSHA access. Where appropriate, the OSHA Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The Principal OSHA Investigator shall assure that such instructions by the OSHA Medical Records Officer are promptly implemented.

(g) Removal of direct personal identifiers. Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal OSHA Investigator shall, unless otherwise authorized by the OSHA Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal OSHA Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

(h) Internal agency use of personally identifiable employee medical information.

(1) The Principal OSHA Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section

(2) The Principal OSHA Investigator, the OSHA Medical Records Officer, the Assistant Secretary, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No OSHA employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Office of the Solicitor of Labor, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(4) OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purpose for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of paragraphs (d)-(g) of this section are repeated with respect to the secondary purpose.

(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

(i) Security procedures.

(1) Agency files containing personally identifiable employee medical information shall be

segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(2) The OSHA Medical Records Officer and the Principal OSHA Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(4) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(5) Intra-agency transfer of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

(j) Retention and destruction of records.

(1) Consistent with OSHA records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(2) Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

(k) Results of an agency analysis using personally identifiable employee medical information. The OSHA Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(l) Annual report. The OSHA Medical Records Officer shall on an annual basis review OSHA's experience under this section during the previous year, and prepare a report to the Assistant Secretary which shall be made available to the public. This report shall discuss:

(1) the number of written access orders approved and a summary of the purposes for access,

[45 F.R. 54334, August 15, 1980.]

(2) the nature and disposition of employee, collective bargaining agent, and employer written objections concerning OSHA access to personally identifiable employee medical information, and

(3) the nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

(m) Inter-agency transfer and public disclosure.

(1) Personally identifiable employee medical information shall not be transferred to another agency or office outside of OSHA (other than to the Office of the Solicitor of Labor) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the Assistant Secretary.

(2) Except as provided in paragraph (m)(3) below, the Assistant Secretary shall not approve a request for an interagency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

(i) needs the requested information in a personally identifiable form for a substantial public health purpose,

(ii) will not use the requested information to make individual determinations concerning affected employees which could be to their detriment,

1952.254—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1952.253(b), amendments to the Virgin Island legislation were passed March 11, and February 26, 1974.

(b) In accordance with § 1952.253(c), the Virgin Islands occupational safety and health standards were promulgated on March 21, 1974.

[40 F.R. 11352, March 11, 1975.]

(c) In accordance with § 1952.253(a) the Virgin Islands has completed the training as described therein.

(d) The Virgin Islands has developed and implemented a manual Management Information System.

(e) In accordance with the requirements of § 1952.10 the Virgin Islands safety and health posters for private and public employees were approved by the Assistant Secretary on September 28, 1976.

[41 F.R. 43406, October 1, 1976.]

(f) The Virgin Islands has developed and implemented an effective Public Information Program.

(g) The Virgin Islands amended its legislation to (i) delete reference to "political subdivisions" and substitute the term "department," and (ii) to add new sections (1) "Variations, Tolerances and Exemptions," and (2) "Disclosure of Confidential Trade Secrets."

(h) The Virgin Islands' Field Operations Manual (FOM) modeled after the Federal FOM has been developed by the State, and approved by the Assistant Secretary.

[42 F.R. 40195, August 9, 1977.]

(i) The Virgin Islands has developed

(1) an acceptable organizational chart;

(2) job descriptions for V.I. occupational safety and health employees which meet the necessary requirements;

(3) a procedure to correct a problem of understaffing in the V.I. in terms of plan commitment;

(4) a procedure for rating and ranking candidates; and

(5) an Affirmative Action Plan for Equal Employment Opportunity acceptable to CSC.

[44 F.R. 76783, December 28, 1979]

(j) In accordance with § 1952.253(e), the Virgin Islands implemented the public employee program in July 1975.

(k) In accordance with § 1952.253(c), the Virgin Islands adopted the Administrative Regulations on March 11, 1974.

[45 F.R. 56054, August 22, 1980.]

1952.255 CHANGES TO APPROVED PLANS.

(a) In accordance with Part 1953, Subpart C of this Chapter, the following Virgin Islands plan changes were approved by the Assistant Secretary on December 20, 1979.

(1) The Virgin Islands amended its Regulation on Discrimination Against Employees Exercising Rights under 24 V.I.C. sec 40(c) to assure payment to employees for time engaged in walkaround activities in accordance with Federal regulations.

(2) The Virgin Islands amended Chapters VIII, X, XI, and XII through September 1977, changing the penalty calculation and assessment procedures to mirror OSHA procedures currently in use for both serious and other-than-serious violations.

[44 F.R. 76783, December 28, 1979.]

SUBPART T—MICHIGAN

1952.260—DESCRIPTION OF THE PLAN

(a) The plan identifies the Michigan Department of Labor and the Department of Public Health as the agencies to be responsible for administering the plan throughout the State. The Department of Labor will be responsible for promulgating and enforcing general safety and construction safety standards while the Department of Public Health will be responsible for the promulgation and enforcement of occupational health standards. Two independent commissions within the Department of Labor, the Construction Safety Commission and the Occupational Safety Standards Commission will promulgate general and construction safety standards while the Director of Public Health will promulgate health standards. Applications for variances to standards will be handled by the two Departments. Administrative adjudications will be the responsibility of the Occupational Safety Compliance and Appeals Board, the Construction Safety Compliance and Appeals Board, and the Occupational Health Review Commission.

(b) The State program is expected to extend its protection to all employees in the State (including those employed by it and its political subdivisions) except those employed by Federal agencies, maritime workers, household domestic workers, and mine workers.

(c) The Plan provides that the State agencies will have full authority to administer and to enforce all laws, rules and orders protecting employee safety and health in all places of employment in the State. It also proposes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards, and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment, and procedures for variances and the protection of employees from hazards. It further provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, adequate safeguards to protect trade secrets, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceeding, procedures for prompt restraint or elimination of imminent danger conditions, provision for the issuance of cease operation orders in cases where employers fail to comply with final orders for abatement, and provision for inspections in response to complaints.

(d) The State intends to promulgate standards for all of the issues contained in 29 CFR Parts 1910 and 1926 with the exception of Ship Repairing (§ 1910.13), Shipbuilding (§ 1910.14), Shipbreaking (§ 1910.15) and Longshoring (§ 1910.16), which standards are to be as effective as Federal standards. Michigan had originally not intended to promulgate a standard covering cooperage machinery comparable to 29 CFR 1910.214, but it has now provided assurances that it will promulgate such standard if the hazards covered by the Federal cooperate standard are found to exist in Michigan. The State has already promulgated standards as effective as Subparts F, K, M, Q and S and the remaining Subparts are to be covered by State standards which are to be promulgated by June 1975.

(e) The Plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the Constitution and laws of Michigan. The Plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 of this title upon enactment of the proposed legislation by the State legislature. A merit system of personnel administration will be used. In addition, health

1952.383 DEVELOPMENTAL SCHEDULE

(a) Position descriptions of State plan personnel by March, 1978.

(b) Public information program (private sector), one year after plan approval.

(c) Analysis for inspection scheduling (private sector), March 1980.

(d) Submit administrative regulations, September, 1978.

(e) Affirmative action plan by July, 1980.

(f) File and promulgate standards, March, 1978.

(g) Adopt the Field Operations Manual, April, 1980.

(h) Adopt management information system, January, 1980.

(i) Internal training schedule, April, 1980.

(j) Employer, employee training schedule, August, 1978.

(k) Public information program (government sector), February, 1980.

(l) Analysis for inspection scheduling (government sector), June, 1980.

(m) Implementation of public employee program, October, 1978.

(n) On-site consultation regulations, March, 1979.

(o) Laboratory, August, 1980.

(p) Posters, February, 1978.

(q) Boiler and Elevator Program, June, 1980.

(r) Staffing on Board for consultation, laboratory, boiler and elevators, February, 1980.

[45 F.R. 54334, August 15, 1980.]

1952.384—COMPLETED DEVELOPMENTAL STEPS

In accordance with the requirements of § 1952.10, Puerto Rico's safety and health posters for private and public employees were approved by the Assistant Secretary, on July 2, 1979.

[44 F.R. 41429, July 17, 1979.]

* U. S. GOVERNMENT PRINTING OFFICE : 1990 311-411/8